

ORGANIZATION AND ADMINISTRATION



Like any agency or business, RCDs must deal with organizational and administrative issues. This section of the handbook contains information and advice to assist RCDs in dealing with these matters.

Common Board Structures

Section 9023 of Division 9 specifies that the powers of the district “shall be exercised and the duties performed by the directors acting as a body and not as individuals.” Decisions should be made using a majority vote. No one director should have any more power than another. However, many districts find it helpful to assign specific duties to individual directors. Often the board will have a president, vice president, secretary, treasurer, other directors and associate directors.

According to section 9306 of Division 9, the board should elect a president from among the directors to serve the board. The president is responsible for developing meeting agendas, facilitating meetings, suggesting or asking for motions, appointing committee meetings, assigning committee responsibilities, training new board members, and other duties as determined by the board.

The vice president serves as a back up to the president. He or she will take on the responsibilities of the president when the president is not available. The president may also ask the vice president or any other director to assume some of the duties typically assigned to the president.

The secretary oversees the distribution of meeting agendas under the direction of the president. Furthermore, the secretary keeps track of suggested agenda items for future agendas. The secretary also has the responsibility to keep minutes, record

committee activities, and initiate correspondence on behalf of the board. The secretary can either be a non-paid director or a paid staff member.

The board treasurer also plays an important role in district operations. The treasurer is responsible for the following: keeping complete and accurate records of district expenditures, issuing receipts for money received by the district, paying district bills when approved by the board, completing monthly financial reports, completing annual financial reports, depositing checks into the district account, as well as completing financial audits when required. These duties may also be assumed by a non-paid director or paid staff member as the board determines. However, it is the duty of ***all*** district board members to exercise fiscal oversight for their district, whether the district has a manager or other staff in place.

Directors who do not serve the board as officers, have the responsibility of participating in the development of plans, gathering information and making recommendations to the board, assuming duties and carrying out tasks as assigned, and participating in all board meetings. Many directors also serve on board committees. Some examples of common board committees include education, budget, fundraising, legislation/advocacy, and public relations. The board develops committees based on specific needs of the district.

Associate directors are also a vital part of a district board. The position of associate director was created to allow the public an opportunity to take an active role in the operation of a district without being a voting member of the board. Often associate directors become directors after serving the district as an associate. Associate directors can assist districts with

special projects or activities and serve in an advisory capacity to the board.

Meetings

Section 9308 of Division 9 states that directors shall hold regular monthly RCD meetings at a usual location and time within the district. Meetings are an essential part of RCD operations. They allow directors to make decisions about district direction and give the public a chance to comment on district activities. The following requirements and suggestions help RCDs stay in compliance with applicable laws and get the most out of their meetings.

Quorum

A quorum is the minimum number of directors who must be present for formal actions of the board to be valid. A majority of the directors constitutes a quorum. For example, if the board has five members, three must be present at the meeting. This rule applies even if the district has vacancies. For instance, even if a five-member board has two vacancies, the RCD must still have three directors present in order to pass formal motions. In the case of a seven member board, if only four members are present, they must unanimously vote on a motion to take action. The exception to the requirement of a quorum is that a number less than a quorum may adjourn a meeting.

The Ralph M. Brown Act

“All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the

legislative body of a local agency.” (Government Code 54953) As public agencies, RCDs must comply with the provisions of Government Code 54950 et seq, commonly known as the Brown Act or The Public Meeting Act. The Brown Act was passed in 1953 to ensure that local agencies conducted their business in public. The act establishes the rule that all meetings of a legislative body of a local agency shall be open to the public, subject to specific exceptions.

Meetings

The Brown Act has undergone several revisions since it was first adopted. In the 1994 revision, the act was changed to officially define the term “meeting.” Section 54952.2 (a) states that a “meeting includes any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains.” In other words, a meeting is a gathering of a majority of board members to discuss district business. For example, if three directors of a five-member board got together for coffee just before the regular board meeting and discussed district business in the process, they would be in violation of the Brown Act. Collective briefings of any form must be open to the public and comply with the Brown Act agenda requirements.

Exceptions

The act does provide exceptions that allow directors to meet in the same place and time as long as they avoid discussing district business. Directors are permitted to attend conferences together as long as they avoid discussing RCD business. A majority of the board members can also attend community meetings of meetings or another legislative body if they avoid discussing district business. They are

allowed to discuss district business at such meetings if it is on the agenda posted by the other legislative body. However, the meeting must be open to the public and comply with all Brown Act requirements. A majority of directors are also allowed to attend purely social or ceremonial events such as a wedding or graduation ceremony. It's important to remember as with all exceptions, the board must avoid discussing district business unless it is part of an agenda that complies with all Brown Act requirements.

Serial Meetings

Directors also need to be careful to avoid having a “serial meeting.” Serial meetings occur when a collective concurrence is developed without having a formal meeting. A serial meeting can take the “daisy chain” form. A daisy chain meeting could be initiated when director A talks to director B about district business, then director B talks to director C about the same topic and so on until a majority of board members have discussed the topic. In such a case, if the majority of the members have talked about the topic and a collective concurrence has been established, a serial meeting has taken place. Serial meetings can also take the “hub and spoke” format. For example, Robert, an employee of Cindy Creek RCD, called the RCD president to discuss RCD business. Robert then called the vice president to discuss the same topic and told the vice president what the president thought. Robert continued to call directors until he had reached a majority. In this case the board had indirectly discussed a topic without public notice and was therefore in violation of the Brown Act. Such serial meetings can also take place using email, fax, or any other method of communication.

Agendas

The Brown Act requires boards to post meeting agendas at least 72 hours before the meeting in a location freely accessible to the public. RCDs are required by Section 9308 of Division 9 to select a day, time and place for their regular monthly meetings. The day, time or location can be changed only after the district passes a resolution and publishes a notice of the change in a newspaper of general circulation.

Agendas must include a brief general description of all business to be discussed or acted upon at the meeting. The agenda must also include a description of any items to be discussed in a closed session. Descriptions must include enough information to give members of the public a good idea what will be discussed at the meeting. The 1994 revision further defined the meaning of a brief description saying that agenda items generally need not be more than 20 words. Agendas also must contain a designated time for a public comment on each agenda.

With three exceptions, no action or discussion can take place on an item not posted on the agenda. However, board members are permitted to answer questions from the public so long as no action is either taken or promised.

The three exceptions to the posting rule specified in Government Code 54954.2(b) include: emergency situations, the need for an immediate action or an item from a previous agenda. An emergency situation exists in the following cases: 1) public health or safety is threatened; 2) a failure to act will result in a work stoppage; or 3) there is a severe disaster. This would generally apply to RCDs only in rare circumstances. An example may be if there is a

severe flood that results in widespread damage. NRCS offers to help stabilize riverbanks but they request that the district act as a local sponsor. If a director brings up the topic at the board meeting for a vote, he or she would not violate the Brown Act.

The need for immediate action exception occurs when the failure to act immediately will result in a lost opportunity. For example, if a director finds a promising grant opportunity the day of the meeting but the application is due in two days, the director could bring it up at the board meeting for a vote and not be in violation of the act.

The item from a previous agenda exception is rarely used. This exception can only be used if an item appeared on a previous agenda and was continued from a meeting that occurred not more than five days earlier.

Closed Sessions

Without specific authority in the Brown Act for a closed session all district business must be discussed in public. If the district wishes to hold a closed session it must post an agenda that identifies the reason for the session and briefly what will be discussed. The agenda must cite the section of the Brown Act that allows for the closed session. Section 54954.5 of the act contains examples of how to present reasons for a closed session on an agenda.

After the closed session, the board must open the meeting to the public and report what was discussed and what actions resulted. It is important to remember that meetings are either open or closed. The RCD can't invite only certain members of the public and exclude others. Closed sessions should

only include RCD directors plus any additional support staff or attorneys needed for the discussion.

Closed sessions are allowed for some personnel matters. However, discussions of salary increases are **not** a valid reason to have a closed session. Pay raises must be discussed in public. The board can hold closed sessions for the following personnel matters:

1. Appointment or employment of staff.
2. Employee performance evaluations.
3. Employee discipline, dismissals, or complaints against an employee. However, if the board chooses to hold a closed session for any of these reasons, they must notify the employee in writing at least 24 hours in advance of the meeting. The employee has the right to request the matter be discussed in public but need not exercise their right to do so.

Pending litigation can also be discussed in a closed session. Boards can confer with their attorney in a closed session regarding formally initiated litigation or anticipated litigation.

Closed sessions are also permitted for real estate negotiations. Real estate negotiations can include the purchase, sale, or lease of property. Prior to closed session negotiations, the RCD must identify its negotiator, the property discussed in negotiation, the negotiating parties, and what is being negotiated (price, terms of payment, etc.).

Some aspects of labor negotiation can also occur in a closed session. However, it is important to note that closed session labor negotiations must occur between

the district and an employee organization. To date, there is no labor organization in California that has district employee members.

As mentioned earlier, all government codes are subject to change. RCD directors have a responsibility to study and be aware of code changes that affect district operations. It is extremely important that directors ensure that the district complies with laws such as the Brown Act.

Policies

Policies are a useful tool to help directors manage district operations. The following is a brief discussion about personnel and Public Records Disclosure requirements and Freedom of Information Act policies. As mentioned previously, districts can develop many types of policies based on their specific needs. For more detailed information about policies, please consult Volume 1, Step 8 of the RCD Guidebook.

Personnel

The first step to creating a personnel policy, or for that matter, any policy, is to review policies created by other agencies or groups. Places to look include: the RCD Guidebook, other RCDs, CARCD, the county, legal firms, or any other agency or organization the RCD has contact with. NACD has developed a Personnel Management Reference Book to help RCDs develop personnel policies. A district should exercise judgment in making sure their policies are applicable to California laws and regulations. Personnel policies will help the RCD avoid many potential problems. The following list identifies items that are typically found in a personnel policy.

Employment

- ❖ Definition of employment classes (full, part-time, temporary)
- ❖ Length of any probationary period
- ❖ Statement of nondiscrimination
- ❖ Qualification requirements for employees
- ❖ Who has the authority to hire, set salaries, and conduct reviews
- ❖ Who acts as employee's supervisor (it is typically district manager for employees, and the board or president for executive or managerial position)
- ❖ Job descriptions
- ❖ Termination and its effect on benefits
- ❖ Statement of employment of relatives and conflict of interests

Compensation

- ❖ Working hours, overtime, paydays, paid holidays
- ❖ Methods of salary progression
- ❖ Listing and general explanation of benefits, including who is eligible to receive them

Employer/Employee Relations

- ❖ Grievance procedures
- ❖ Administration of discipline
- ❖ Code of conduct

Performance Evaluation

- ❖ How employees are evaluated and by whom

Employee Training

- ❖ Orientation of new employees

- ❖ How training needs are determined
- ❖ Training plans

Employee Services

- ❖ Safety on the job, including procedures for reporting accidents and seeking medical attention (if the district does not have a separate safety policy)
- ❖ Awards program and other recognition, if any, for significant contributions of employees

Once a personnel policy has been developed, directors should ensure that personnel management is conducted according to policy. Furthermore, directors must clearly explain the policy to all employees and ensure that the policy is understood. It is also important to conduct annual performance reviews of all employees. Such reviews and policies should be signed by the employee as having been read and understood.

Insurance

Does your district provide advice, employ personnel or manage projects? If so, you need insurance. However, even if your district is not doing any of the activities mentioned above, it is still absolutely critical that your district have insurance. In today's litigious environment, no organization is safe from being a defendant in a lawsuit. It is irrelevant that your district is providing a public service or benefiting the community. One lawsuit could potentially end your program.

It is imperative that your district consult with an insurance company to determine what types and



levels of coverage are appropriate for your organization. CARCD can also provide assistance for obtaining insurance. Many RCDs have already dealt with this issue and may be able to provide assistance. Many funding agencies require districts to have insurance and to keep it in force throughout the grant's term. Insurance requirements may include:

- Worker's Compensation Insurance in accordance with the statutory requirements of the State of California,
- Commercial general liability insurance,
- Automobile and/or property liability insurance.
- Errors and Omissions insurance for directors

This list is not all-inclusive. Your district must consult with an insurance company and the funding agency to determine the types and amounts of coverage that are required.

Although insurance is costly, not having insurance could be devastating. Your district cannot afford not to have insurance.

Personnel and Volunteers

RCDs often have extensive programs that require employing full time staff. Districts can hire both employees and contractors depending on their needs. Contractors are generally used for one-time projects that require special skills. Contractors do not require direct supervision by the district. Employees, on the other hand, are more of a long-term investment and are directly supervised by the District. Employees generally work in the district office and use district

equipment or property. There are advantages and disadvantages to both options.

Employees can be a great investment for the RCD. They can learn and develop skills that will be an asset to the district in the future.

Contractors are generally hired to complete one specific job. For example, if the RCD would like to complete a stream bank restoration project, hiring a hydrologist as a contractor may be appropriate. For the most part, the contractor will only work on the specific project they have been contracted for. The district must be careful not to treat contractors too much like an employee. Here are some tips to remember when hiring contractors:

- Don't exercise too much control over the contractor
- In most cases, the contractor should not work out of the district office but maintain his or her own office and equipment.
- The district should not be the contractors' sole source of income. Ideally, the contractor would have other clients.

Once the district has assessed its needs and decided to hire employees or contractors, the next step is developing a personnel policy. The policy should identify one director, generally the board president, as the staff supervisor. The district can also delegate staff supervision to the district manager or executive director; however, the director assigned to staff relations should work closely with the managing employee. The district is ultimately responsible for employee supervision and must avoid delegating the responsibility to NRCS or any other outside agency.

It's important to designate one director as the primary contact between the board and employees. It can be extremely difficult for employees to have more than one person telling them what to do. This is especially true if directors are offering them conflicting input. To avoid this, the designated director should be the only board member who works directly with the staff.

Volunteers can also be a valuable asset for the district. RCDs typically use volunteers to help with specific projects. For example, if the RCD wanted to clean up a river they might recruit volunteers to participate in a stream bank "clean up day." RCDs can also start volunteer monitoring programs, use volunteers for educational events, direct mailings or data entry, creating brochures, or mapping noxious weeds. There are many different ways RCDs can use volunteers. However, if a district chooses to use volunteers it should develop a volunteer policy to assist with the management of the volunteers. A volunteer policy should contain guidelines for work and training, guidelines for safe work practices, and grounds for recruitment. As with employees, volunteers should be informed of all district policies and sign a statement once they have reviewed the policies.